

Assembly Bill No. 2136

Passed the Assembly August 26, 2004

Chief Clerk of the Assembly

Passed the Senate August 24, 2004

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

Corrected 9-13-04



CHAPTER _____

An act to amend Section 11880 of, and to add Sections 11758.421, 11758.425, 11839.20, and 11880.5 to, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 2136, Goldberg. Controlled substances: treatment.

(1) Existing law requires the State Department of Alcohol and Drug Programs to adopt any regulations necessary to ensure that every licensed narcotic treatment program is making a sustained effort to end the drug dependency of the patients.

This bill would instead require that these regulations ensure that these programs make a sustained effort to end the improper use of legal drugs or the abuse of illicit drugs.

(2) Under existing law, the department is responsible for licensing narcotic treatment programs to use replacement narcotic therapy in the treatment of addicted persons whose addiction was acquired or supported by the use of a narcotic drug or drugs, not in compliance with a physician and surgeon's legal prescription.

This bill would authorize a patient who is either a defendant or probationer in a court supervised rehabilitation program to be directed by that court to discontinue narcotic replacement therapy only under specified conditions.

(3) Existing law authorizes the department to enter into a Medi-Cal Drug Treatment Program contract with each county for the provision of services within the county service area. Existing law requires the department to establish fees for controlled substances dispensed to Medi-Cal beneficiaries under this program based on a per capita uniform statewide monthly reimbursement rate. Existing law requires that reimbursement under the program be limited to the lower of that uniform statewide monthly reimbursement rate or the provider's usual and customary charge to the public for the same or similar services.

This bill would provide that if a narcotic treatment program provider establishes a sliding indigency scale for low-income persons who are not eligible to participate in the Medi-Cal Drug Treatment Program in accordance with requirements established by the bill, the provider shall be deemed in compliance with



federal and state law for purposes of the application of an exception to reimbursement requirements.

This bill would provide that changes in Section 11880 of the Health and Safety Code proposed by this bill be incorporated into Section 11839.20 proposed to be added to the Health and Safety Code by SB 1838 to become operative if both this bill and SB 1838 are chaptered and become effective on or before January 1, 2005, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 11758.421 is added to the Health and Safety Code, to read:

11758.421. (a) (1) The Legislature finds and declares all of the following:

(A) Medical treatment for indigent patients who are not eligible for Medi-Cal is essential to protecting the public health.

(B) The Legislature supports the adoption of standardized and simplified forms and procedures in order to promote the drug treatment of patients in this category.

(C) Providers should not be required by the state to subsidize the medical treatment provided to this category of patients.

(D) The Legislature supports the therapeutic value of patients in this category contributing some level of fees for drug treatment services in order to support the goals of those drug treatment services.

(2) It is the intent of the Legislature in enacting this section to encourage narcotic treatment program providers to serve indigent patients who are not eligible for Medi-Cal. It is also the intent of the Legislature that the State Department of Alcohol and Drug Programs allow narcotic treatment program providers to charge therapeutic fees for providing drug treatment to this category of patient if the providers establish a fee scale that complies with the documentation requirements established pursuant to this section and federal law.

(b) (1) The Legislature recognizes that narcotic treatment program providers are reimbursed for controlled substances provided under the Medi-Cal Drug Treatment Program, also known as Drug Medi-Cal (Chapter 3.5 (commencing with Section 11758.40) of Part 1), and pursuant to federal law at a rate that is



the lower of the per capita uniform statewide monthly reimbursement or Drug Medi-Cal rate, or the provider's usual and customary charge to the general public for the same or similar services, as provided in paragraph (1) of subdivision (h) of Section 11758.42.

(2) It furthers the intent of the Legislature to ensure that narcotic treatment programs in the state are able to serve indigent clients, and that there is an exception to the reimbursement requirements described in paragraph (1), as the federal law has been interpreted by representatives with the Centers for Medicare and Medicaid Services. Pursuant to this exception, if a narcotic treatment program provider who is serving low-income non-Drug Medi-Cal clients complies with a federal requirement for the application of a sliding indigency scale, the reduced charges under the sliding indigency scale will not lower the provider's usual and customary charge determination for purposes of Medi-Cal reimbursement.

(c) A narcotic treatment program provider licensed as provided in this chapter that serves low-income non-Drug Medi-Cal clients shall be deemed in compliance with federal and state law, for purposes of the application of the exception described in paragraph (2) of subdivision (b), and avoid audit disallowances, if the provider implements a sliding indigency scale that meets all of the following guidelines:

(1) The maximum fee contained in the scale shall be the provider's full nondiscounted, published charge and shall be at least the rate that Drug Medi-Cal would pay for the same or similar services provided to Drug Medi-Cal clients.

(2) The sliding indigency scale shall provide for an array of different charges, based upon a client's ability to pay, as measured by identifiable variables. These variables may include, but need not be limited to, financial information and the number of dependents of the client.

(3) Income ranges shall be in increments that result in a reasonable distribution of clients paying differing amounts for services based on differing abilities to pay.

(4) A provider shall obtain written documentation that supports an indigency allowance under the sliding indigency scale established pursuant to this section, including a financial determination. In cases where this written documentation cannot



be obtained, the provider shall document good faith efforts made to obtain this written documentation. For purposes of this paragraph, “good faith” means that the provider has made at least three documented attempts to collect documentation from a client.

(5) The provider shall maintain all written documentation that supports an indigency allowance under this section, including, if used, the financial evaluation form set forth in Section 11876.6.

(6) Written policies shall be established and maintained that set forth the basis for determining whether an indigency allowance may be granted under this section and establish what documentation is to be requested from a client.

(d) In developing the sliding indigency scale, a narcotic treatment program provider shall consider, but need not include, any or all of the following components:

(1) Vertically, the rows would reflect increments of family or household income. There would be a sufficient number of increments to allow for differing charges, for example, a six hundred dollar (\$600) increase per interval.

(2) Horizontally, the columns would provide for some other variable, for example, family size, in which case, the columns would reflect the number of people dependent on the income, including the client.

(3) Each row, except the first and last rows, would contain at least two different fee amounts and each of the columns, four or more in number, would contain at least six different fee amounts.

(4) The cells would contain an array of fees so that no one fee would be represented in more than 25 percent of the cells.

(e) A narcotic treatment program provider that uses the financial evaluation form instructions and financial form set forth in Section 11758.425 in obtaining written documentation that supports an indigency allowance as required under paragraph (4) of subdivision (c) shall be deemed in compliance with paragraph (4) of subdivision (c).

SEC. 2. Section 11758.425 is added to the Health and Safety Code, to read:

11758.425. A narcotic treatment program provider may use the following instructions and financial evaluation form to comply with the requirements of paragraph (4) of subdivision (c) of Section 11758.421:



FINANCIAL EVALUATION FORM INSTRUCTIONS

MONTHLY INCOME DATA—This data should specify the source and the amount and be supported by sufficient documentation. Income data may include, but is not limited to, income received as a paid employee, unemployment benefits, disability benefits, pension payments, family income, savings income, or other sources.

MONTHLY EXPENSES DATA—This data is not required unless there is no evidence or documentation of income data. Expenses data may include, but are not limited to, any known expenses related to the following:

- (1) Court ordered payments such as child support, fines, debts, restitution, or other payments.
- (2) Housing-related expenses such as rent, mortgage, insurance, utilities, or other obligations.
- (3) Transportation costs such as any related expenses including auto payments or auto insurance payments.
- (4) Insurance coverage should also be noted if it produces either an expense or benefit to the client.

CLIENT MONTHLY TREATMENT FEE—The following applies to this data:

- (1) The amount box indicates the client's fee according to his or her location on the sliding scale.
- (2) The adjusted client monthly fee box is to be filled only if the fee to be charged differs from the fee indicated by the client's location on the sliding scale.
- (3) If the fee is adjusted from what the sliding scale would indicate, a reason for the adjustment must be provided. (Valid reasons might include extraordinary medical expenses for a client suffering from HIV/AIDS, etc.).

PLEASE NOTE—The documentation for this form requires that a good faith effort as defined in paragraph (4) of subdivision (c) of Section 11876.5 of the Health and Safety Code be made. The State Department of Alcohol and Drug Programs shall consider a provider's efforts to collect the information sufficient if at least three documented attempts to collect the information have been made. Any questions on this form may be directed to the department at (____) ____-____.



TIP-IN TABLE TO BE INSERTED



SEC. 3. Section 11839.20 is added to the Health and Safety Code, to read:

11839.20. (a) It is the intent of the Legislature in licensing narcotic treatment programs that use prescription medications to provide a means whereby the patient may be rehabilitated and will no longer need to support a dependency on narcotics.

(b) It is further the intent of the Legislature that each narcotic treatment program shall have a strong rehabilitative element, including, but not limited to, individual and group therapy, counseling, vocational guidance, and job and education counseling.

(c) The Legislature finds and declares that the ultimate goal of all narcotic treatment programs shall be to aid the patient in altering his or her lifestyle and eventually to eliminate the improper use of legal drugs or the abuse of illicit drugs.

(d) The department shall adopt any regulations necessary to ensure that every program is making a sustained effort to end the improper use of legal drugs or the abuse of illicit drugs.

SEC. 4. Section 11880 of the Health and Safety Code is amended to read:

11880. (a) It is the intent of the Legislature in licensing narcotic treatment programs that use prescription medications to provide a means whereby the patient may be rehabilitated and will no longer need to support a dependency on heroin.

(b) It is further the intent of the Legislature that each narcotic treatment program shall have a strong rehabilitative element, including, but not limited to, individual and group therapy, counseling, vocational guidance, and job and education counseling.

(c) The Legislature finds and declares that the ultimate goal of all narcotic treatment programs shall be to aid the patient in altering his or her lifestyle and eventually to eliminate the improper use of legal drugs or the abuse of illicit drugs.

(d) The department shall adopt any regulations necessary to ensure that every program is making a sustained effort to end the improper use of legal drugs or the abuse of illicit drugs.

SEC. 5. Section 11880.5 is added to the Health and Safety Code, to read:



11880.5. (a) The Legislature finds and declares that because both the possession and use of heroin are felonies, some patients in narcotic treatment programs are under both the jurisdiction of a court and the care of a treatment provider.

(b) A patient who is also either a defendant or probationer in a court supervised rehabilitation program may be directed by that court to discontinue narcotic replacement therapy only when the defendant's or probationer's treatment provider who is directly providing the narcotic replacement therapy recommends discontinuation and the court agrees that discontinuation is a necessary component of an effective treatment plan for the defendant or probationer.

SEC. 6. Section 3 of this bill shall only become operative if (1) both this bill and SB 1838 are enacted and become effective on or before January 1, 2005, (2) this bill amends Section 11880 of the Health and Safety Code, SB 1838 adds Section 11839.20 to the Health and Safety Code and repeals Section 11880 of the Health and Safety Code, and (3) this bill is enacted after SB 1838, in which case Section 11880 of the Health and Safety Code, as contained in Section 4 of this bill shall not become operative.



Approved _____, 2004

Governor

